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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File:

Office: BANGKOK, THAILAND

Date:

JAN 14 2003

IN RE: Applicant:

Application:

Application for Waiver of Grounds of Inadmissibility under
Section 212(g)(2) of the Immigration and Nationality Act, 8
U.S.C. 1182(g)(2)

IN BEHALF OF APPLICANT: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Bangkok, Thailand, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Australia who was found by a consular officer to be inadmissible to the United States under section 212(a)(1)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(1)(A)(ii), for having failed to present documentation of having received vaccination against vaccine-preventable diseases. The applicant is the child of a United States citizen mother and is the beneficiary of an approved petition for alien relative. The mother seeks a waiver of this permanent bar to admission as provided under section 212(g)(2) of the Act, 8 U.S.C. 1182(g)(2), on the child's behalf in order for the child to obtain an immigrant visa and travel to the United States to reside.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-
Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) HEALTH RELATED GROUNDS.-

(A) IN GENERAL.- Any alien-

* * *

(ii) who seeks admission as an immigrant, or who seeks adjustment of status to the status of an alien lawfully admitted for permanent residence, and who has failed to present documentation of having received vaccination against vaccination-preventable diseases, which shall include at least the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis, and any other vaccinations against vaccine preventable diseases recommended by the Advisory Committee for Immunization Practices,

* * *

(B) WAIVER AUTHORIZED.-For provisions authorizing waiver of certain clauses of subparagraph (A), see subsection(g).

Section 212(g)(2) provides that the Attorney General may waive the application of subsection (a)(1)(A)(ii) in the case of any alien-

(A) who receives vaccination against the vaccine-preventable disease or diseases for which the alien has failed to present documentation of previous vaccination,

(B) for whom a civil surgeon, medical officer, or panel physician (as those terms are defined by section 34.2 of title 42 of the Code of Federal Regulations) certifies according to such regulations as the Secretary of Health and Human Services may prescribe, that such vaccination would not be medically appropriate, or

(c) under such circumstances as the Attorney General provides by regulation, with respect to whom the requirement of such a vaccination would be contrary to the alien's beliefs or moral convictions; . . .

At present, Service guidelines provide that an applicant who is inadmissible under section 212(a)(1)(A)(ii) and seeks a waiver of inadmissibility under section 212(g)(2)(C), must demonstrate the following criteria for the waiver to be approved: (1) he or she is opposed to vaccinations in any form; (2) the objection is based on religious belief or moral convictions (whether or not a member of a recognized religion); and (3) the religious belief or moral conviction (whether or not as a part of a "mainstream" religion) is sincere. When the waiver application is for a child, the child's parent must satisfy these three requirements.

The record reflects that on August 7, 2001, the applicant's mother requested a waiver of vaccinations for her four children, including the applicant. At that time, she asserted that her objection to having her children vaccinated was based on a sincere moral conviction, significant research, and first-hand experience. She specifically claimed that her opposition was based, in part, on three cases of severe reaction to vaccinations in her recent family history, including two cases of permanent brain damage due to vaccinations as infants and one case of an adult who became seriously ill for a period of six months after vaccination as an adult. She stated that based on these family experiences and research, she has a serious belief that vaccinations are harmful and that it is therefore against her moral standards to have her children vaccinated. The mother further noted that vaccinations in Australia are free of charge and widely available, and that the Australian government pays parents a substantial sum of money to have their children vaccinated. She asserted that her objection to vaccinations regardless of the economic benefit and ease of availability is proof, in itself, of the sincerity of her objection.

On September 20, 2001, the district director issued a notice of intent to deny the applicant's waiver request, giving the applicant's mother thirty days in which to submit a rebuttal and/or additional evidence in support of the application. In the notice of

intent to deny, the district director noted that the applicant had failed to provide any medical records of the three relatives to establish that their medical problems were a result of vaccinations; had failed to provide any examples of research from experts in the field of vaccinations; and had failed to provide any medical history from a medical provider that would support the mother's concerns that her children could be at risk.

In response to the notice of intent to deny the application, the applicant's mother provided a letter indicating that her objection to vaccinations is based both on moral and religious beliefs, and pointing out that as a Christian her moral beliefs are derived from her religious beliefs. She also provided documentation including doctrinal references, citations of U.S. state court decisions upholding the right of individuals seeking exemptions from vaccinations based upon personal religious beliefs, and quotations concerning the adverse effects of vaccinations

On January 25, 2002, the district director issued a denial of the applicant's waiver request. In her decision, the district director noted that the applicant's response failed to include evidence to establish a family history of medical problems due to vaccinations or evidence from a medical provider to support a claim that the children could be at risk to vaccinations. The district director also noted that the religious beliefs given by the applicant's mother as a basis for her opposition to vaccinations are those espoused by many people who protect their children with vaccinations; that the mother's claim that immunizations contain fetal tissue was not substantiated; the many quotes regarding vaccines were outdated, written by the general population, and contained hearsay information and little or no scientific evidence that would establish that vaccines are indeed harmful. The district director concluded that the applicant's mother had failed to establish that she is opposed to vaccinations in any form, that her objection is based on religious or moral convictions, and that her religious belief or moral conviction is sincere. The district director denied the application accordingly.

On appeal, the applicant's mother asserts that the information provided to support her claim that her conviction is sincere has not been fully considered; that the district director's decision to deny the application was based on the issue itself, not the criteria required for a waiver to be granted; and that she complies with the requirements for a waiver to be granted and is prepared to exercise all possible avenues of appeal. On appeal, the applicant's mother indicates that a brief and/or evidence will be forthcoming within thirty days after filing the appeal. Since more than seven months have passed and no new information or documentation has been received, a decision will be rendered based on the present record.

While the concerns of the applicant's mother regarding vaccinations are understandable, the concern of children and others who may

contact these preventable life-altering diseases is significant. The law requires vaccinations for immigrants in order to prevent the spread of preventable diseases through vaccinations, and to promote the health and well-being of people living in the United States.

The Associate Commissioner does not find it unreasonable to require the applicant's mother to submit credible documentary evidence of her objection to vaccinations. The mother has stated that her convictions are based, in part, on recent family medical problems associated with vaccinations. She indicates that because of the potential medical harm to her children based on this family history, she morally objects to having the children vaccinated, and that her moral objection, in turn, stems from her religious beliefs.

The applicant's mother has failed to provide any documentation to support her claim of recent family medical problems associated with vaccines. There is also no documentation contained in the record from a licensed medical provider to establish that the applicant's mother has historically opposed vaccinations for her children or that the children are at risk based on their family medical history. Furthermore, the record fails to include any recent, credible scientific reports to support a claim that vaccinations are harmful.

It is concluded that the applicant's mother has failed to satisfactorily establish that the applicant warrants a favorable exercise of discretion to waive the vaccination requirement. Accordingly, the appeal will be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(g)(2) of the Act, the burden of proving eligibility remains entirely with the applicant. Here, that burden has not been met.

ORDER: The appeal is dismissed.